

### **Remarks**

Claims 1-9 are currently pending in this application. Claims 10-21 are cancelled in this amendment. Claim 1 is amended to state that the soy product is coated with a liquid coating material wherein the liquid coating material is a GRAS material. Support for this amendment can be found on page 7 lines 23-34. Claim 2 is amended by removing the comma (,) at the end of the claim and replacing it with a period (.).

### **Rejection Under 35 §USC 112**

Claim 12 was rejected under 35 §USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is rendered moot by the cancellation of claim 12.

### **Rejection Under 35 §USC 103**

Claims 1-7 and 13-18 were rejected under 35 §USC 103(a) as being unpatentable over Schurr (WO 97/07879) in view of Olson et al. (US Patent No. 3,976,793).

Schurr relates to coating solid particles (powdery or granular materials - page 2 lines 26-29) with a coating material (a solid that is melted, or a solid that is dissolved or a slurry containing a solid - page 2 lines 32-36). But for the Examples, these solid and coating materials are not discussed by name. In Example 1, the solid is dodecanedioic acid having a particle size of 23.5  $\mu$ . The coating material is a GMA copolymer of glycidyl methacrylate, Butyl methacrylate, methyl methacrylate and styrene. After coating the coated particle has a particle size of 26.2  $\mu$ .

In Example 2, the solid is calcium carbonate having a particle size of 10  $\mu$ . The coating is wood rosin. There is no particle size value of the coated particle of Example 2. In Example 3, the solid is a sulfonylurea herbicide having a particle size of from 2-40  $\mu$ . The coating is either wax or rosin. There is no particle size value of the coated particle of Example 3. In Example 4, the solid is the herbicide bromacil having a particle size of less than 1 to 30  $\mu$ . The coating is stearic acid. There is no particle size value of the coated particle of Example 4.

Olson et al. teach impregnating toasted oat/soy flakes. Oat flour and soy flour are combined and hydrated to a moisture content of 18-25%. The formed dough is cooked, pelletized, and dried to a moisture content of below 21%. The dried pellets are then flaked by

being passed through rolls to compress and flatten them to create flakes that are to be toasted. Prior to toasting, the flakes have a thickness of from 0.015 to 0.025 inches (380-635  $\mu$ ). The dried flakes are then in a condition to undergo surface application of a dilute sweetening solution. If uncoated, the flakes become soft and lose crispness more readily when wetted in milk or cream. The coating is an unsaturated sucrose solution, although salt, flavorings, vitamins, minerals and other supplements may be added.

It is noted that in the Schurr examples, the particles size of the solid particles are less than 40  $\mu$ . In the Schurr examples, none of the solid particle materials and none of the coating materials are foodstuffs. In the present claims, the product to be coated is selected from the group consisting of soy protein isolate, soy concentrate, soy meal, soy cotyledon fiber, dehulled soybeans, soy hypocotyls, soy grits, soy chips, soy flour, textured soy protein, and soy flakes. These are all edible foodstuffs. In the Schurr examples, none of the coatings materials are edible materials. In present claim 1, as amended, the soy product is coated with a liquid coating material wherein the liquid coating material is a GRAS material.

In Olson et al. the cooked dough mass is extruded to pellets. As the extruded mass leaves the extruder, it exits through a die that has circular openings. A cutting knife cuts on the surface of the die such that pellets are formed. These pellets are cylindrical in shape. As these cylindrical pellets pass between rollers, they are flattened to flakes that are between 380-635  $\mu$ . Since a flattening occurs, the flakes also have a width and length. In the present invention, the product to be coated is a foodstuff. Unlike Olson et al., the present foodstuff is uncooked. Further, the present foodstuff is not extruded, but rather is coated in its native state. The present products to be coated are all spherical in shape. One skilled in the art would not be motivated to take the teachings of Schurr directed to non foodstuff particles and non foodstuff coatings and combine with the teachings of Olson et al. directed to coating an edible flake with an edible foodstuff to arrive at the present invention of coating a foodstuff particle with a GRAS foodstuff coating.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office

has clearly failed to meet its burden under (1), (2), and (3) above, since the teachings of Schurr in combination with Olson et al. fail to teach or suggest all of the claim limitations of the presently pending claims 1-11, as amended. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 8 and 9 were rejected under 35 §USC 103(a) as being unpatentable over Schurr (WO 97/07879) in view of Olson et al. (US Patent No. 3,976,793), and further in view of Mukerji et al. (US Patent No. 5,506,2209).

Both Schurr and Olson et al. are discussed above. Mukerji et al. are directed to an enterally ingested product of human  $\beta$ -casein and at least one protein not found in human milk such as soy protein. There is no teaching as to the nature of the soy protein. However, in all probability the soy protein is not a solid particle. The soy protein is, in all probability a liquid extract of soy protein. One would not take the teachings of both Schurr and Olson et al., whose deficiencies are discussed above and combine those teachings with Mukerji et al. to arrive at the present invention. of coating with a GRAS material a solid particle foodstuff that has utility as a beverage or an infant formula.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1), (2), and (3) above, since the teachings of Schurr and Olson et al. and further in view of Mukerji et al. fail to teach or suggest all of the claim limitations of the present claims 1-11, as amended. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 10-11 were rejected under 35 §USC 103(a) as being unpatentable over Schurr (WO 97/07879) in view of Olson et al. (US Patent No. 3,976,793), and further in view of Pitchon et al. (US Patent No. 5,506,2209).

This rejection is rendered moot by the cancellation of claims 10 and 11.

Claims 12 and 19-21 were rejected under 35 USC 103(a) as being unpatentable over Schurr (WO 97/07879) in view of Olson et al. (US Patent No. 3,976,793), and further in view of Campbell et al. (US Patent No. 5,506,2209).

This rejection is rendered in view of the cancellation of claims 12-21.

#### **Double Patenting**

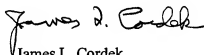
Before submitting any terminal disclaimers, Applicants choose to wait for the outcome of the prior art rejections, based upon the current amendment to the claims.

For the foregoing reasons, it is submitted that the present claims are in condition for allowance. The foregoing remarks are believed to be a full and complete response to the outstanding office action. Therefore favorable reconsideration and allowance are respectfully requested. If for any reason the Examiner believes a telephone conference would expedite the prosecution of this application, it is respectfully requested that the Examiner call Applicants' representative at 314.659.3218.

If any additional fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-0421.

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Respectfully submitted,  
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